

201301018



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OCT 12 2012

Uniform Issue List: 408.03-00

T:EP:RA:TI

Legend:

Taxpayer A =

IRA B =

Financial Institution C =

Individual D =

Account E =

Financial Institution F =

Financial Institution G =

Financial Institution H =

Account I =

Account J =

Amount 1 =

Amount 2 =

Amount 3 =

Dear :

This letter is in response to a request for a letter ruling, dated December 5, 2011, as supplemented by correspondence dated March 8 and 24, and August 14 and

28, 2012, submitted on your behalf by your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A represents that he received a distribution of Amount 1 from IRA B. Taxpayer A asserts that his failure to accomplish a rollover of Amount 1 within the 60-day period prescribed by section 408(d)(3) of the Code was due to a failure by Individual D to comply with Taxpayer A's instruction that Amount 1 be deposited in another IRA.

Taxpayer A maintained IRA B, an individual retirement account, under section 408(a) of the Code, with Financial Institution C. In July of 2008, Taxpayer A became dissatisfied with the overall performance of IRA B. On July 30, 2008, Taxpayer A withdrew Amount 1 from IRA B so that he could transfer it to a different IRA. On August 11, 2008, Taxpayer A met with Individual D, a financial advisor with Financial Institution F. Taxpayer A endorsed the distribution check for Amount 1 over to Financial Institution F and gave Individual D precise verbal instructions that Amount 1 was to be deposited into an IRA account with Financial Institution F. At the time these instructions were given to Individual D, Taxpayer A's spouse asked Individual D if any of this money was taxable and Individual D's reply was no. However, Amount 1 was deposited into Account E, a non-IRA account with Financial Institution F. In September and December of 2008, Taxpayer A received two other small distributions from IRA B (totaling Amount 2) which were intended for personal use.

Because his anticipated reportable income was below a threshold amount, Taxpayer A understood that he was not required to file a tax return for 2008. On May 12, 2009, the Internal Revenue Service informed Taxpayer A that his income was sufficient to require him to file a Form 1040 tax return for the 2008 tax year. Taxpayer A was furnished a Form 1099-R for the 2008 tax year by Financial Institution C which showed that Amount 3 (the sum of Amounts 1 and 2) was taxable income for 2008. On June 2, 2009, Taxpayer A filed his Form 1040 for the 2008 tax year. Amount 2 was reported as taxable income, Amount 1 was not since Taxpayer A understood that Amount 1 had been rolled over to an IRA. Soon thereafter, Taxpayer A contacted Individual D and learned that Amount 1 was never rolled into an IRA. This was contrary to Taxpayer A's verbal instructions that he gave to Individual D in person. On April 28, 2009, Taxpayer A withdrew funds from Account E to pay anticipated additional federal and state income taxes, penalties, and interest. On May 20, 2009, Taxpayer A filed an amended Form 1040 for the 2008 tax year in which all of the distributions from IRA B (Amount 1 and Amount 2) were reported as income as if no rollover had been intended. Thereafter, Taxpayer A removed the remaining funds in Account E and transferred them to non-IRA Accounts I and J with Financial Institutions G and H, respectively.

Based on the above facts and representations, you request that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount 1.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d) of the Code, any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if -

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3) of the Code). Section 408(d)(3)(B) of the Code provides that section 408(d)(3) of the Code does not apply to any amount described in section 408(d)(3)(A)(i) of the Code received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) of the Code from an IRA which was not includible in gross income because of the application of section 408(d)(3) of the Code.

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable

control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to sections 408(d)(3)(I) and 402(c)(3)(B) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and the documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover of Amount 1 was due to a failure by Individual D to follow his instruction to deposit Amount 1 into an IRA with Financial Institution F.

Therefore, pursuant to section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA B and Taxpayer A is granted a period of 60 days from the issuance of this letter ruling to contribute no more than Amount 1 into an eligible retirement plan or rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, the contribution will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact
(I.D. #), , at () .

Sincerely yours,

Carlton A. Watkins

Manager
Employee Plans Technical Group 1

Enclosures:

Deleted Copy of this Letter

Notice of Intention to Disclose, Notice 437

cc: